IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5298 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGDISH A RAMANUJ - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for Petitioner(s) : 1,
MR DA DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR SM MAZGAONKAR for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/03/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner an employee under the Saurashtra University who was initially appointed by the Bhavnagar University has prayed for an appropriate writ, direction and order to quash and set

aside the order passed by the Bhavnagar University dated 4.7.1997. It is also further prayed to direct the respondent Government not to deny the pay protection to the petitioner as granted by the Bhavnagar University vide order dated 3.11.1995.

2. Few facts are necessary for the purpose of determining of the present petition.

Petitioner was working as an Assistant Teacher in the Sanatan Dharma High School, Bhavnagar since July, 1979 to July, 1985. Pursuant to the public advertisement issued by the Bhavnagar University in the year 1995 inviting applications for the post of Lecturer in the Education Department of the Bhavnagar University, the petitioner applied for the said post and the petitioner was selected and appointed in the Bhavnagar University vide order dated 23.6.1995. The Petitioner resumed the duty as a Lecturer in the Bhavnagar University on 7.7.1995. It is the case on behalf of the petitioner that the pay scale of the Assistant Teacher was 1640-2900 and since the petitioner had completed more than nine years of service as Assistant Teacher, he was entitled for the higher grade scale as per the policy of the State and therefore, he was getting the pay scale of 2000-3500. It is the case on behalf of the petitioner that when the petitioner joined the Bhavnagar University as a Lecturer as drawn by him as Assistant Teacher was required to be protected by the Bhavnagar University. It is the case on behalf of the petitioner that in the appointment order itself it was maintained that the pay of the petitioner as drawn by him as Assistant Teacher would be protected while working as a Lecturer in the Bhavnagar University and accordingly an order came to be passed on

3.11.1995, whereby the pay of the petitioner was protected. It appears that thereafter further increments were released, when subsequently by order dated 4.7.1997, the Bhavnagar University passed an order whereby the pay of the petitioner was reduced to Rs. 2200/- from the date of his joining as a Lecturer in the Bhavnagar University i.e. w.e.f. 7.7.1995. Being aggrieved and dissatisfied with the said order in not protecting the pay of the petitioner as drawn by him as an assistant teacher while working as a Lecturer in the Bhavnagar University, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

3. Ms Pandya, learned advocate appearing for the petitioner has taken the Court to various orders / instructions/ resolutions passed by the State Government from time to time whereby, an employee from one college to another college, from one school to another school, with regard to the non-teaching staff etc., the pay was protected and therefore, it is requested to quash and set aside the impugned order by which, the pay of the petitioner as Assistant Teacher was not protected when the petitioner was appointed as a Lecturer in the Bhavnagar University. Heavy reliance was placed on the office order dated 30.1.1986 of the Saurashtra University (Page 20 Annexure G to the petition) and submitted that in the case of one Smt. Pravina Vinodray Budhdev, who was appointed as a Lecturer in Education in Saurashtra university, her pay was protected. Therefore, it is requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned AGP while opposing the present Special Civil Application has submitted that there is no nexus and/or

connection with the service as Teacher in the school with that of lecturer in the college and/or the University. It is submitted that pursuant to the advertisement inviting the applications for the post of Lecturer by the Bhavnagar University, the petitioner applied for the post of Lecturer and in the advertisement also there was no reference that the pay would be protected. Meeting with the office order dated 30.1.1998 upon which the reliance has been placed by the petitioner, Shri Desai has submitted that the case of Smt. Pravinaben Budhdev cannot be compared with that of the petitioner as so far as Smt. Pravinaben Budhdev is concerned, it was the case of transfer to one college to another college and therefore, the reliance placed upon the office order dated 4.7.1995 is absolutely misplaced. It is further submitted that there is no policy of the State Government to protect the pay of an employee who was serving in the school when he/she is appointed in the college and/or in the University. It is submitted that merely because there is some policy with regard to the employee appointed / transferred from college to college and/or school to school, that does not mean that if an employee who was serving in the school has accepted the fresh appointment in University and/or college, his/her salary is to be protected. Therefore, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing for the parties.

6. It is not in dispute that the petitioner was serving as an Assistant Teacher in the school. Fresh applications were invited by the Bhavnagar University for the post of Lecturer in the Bhavnagar University, pursuant to which the petitioner applied and he was selected and appointed as a Lecturer. In the advertisement, there

was no condition and/or reference with regard to pay protection. The petitioner applied for the said post and was appointed and accepted the post. The learned advocate appearing for the petitioner is not in a position to satisfy this Court and /or point out this Court any policy and/or circular and/or office order and/or circular issued by the State Government with regard to the pay protection of a teacher who would be subsequently appointed in the University and/or college. As such, Ms Pandya, learned advocate appearing for the petitioner has conceded that there is no such policy of the State Government. However, she has submitted that when an employee who was serving in one college is transferred and/or appointed in another college and/or from one school to another school and when it is the policy of the State Government to protect the pay, the same anomaly should be applied in the case of the petitioner also i.e an employee who was serving as Assistant Teacher in the school when he is appointed subsequently in the University and/or college. Such submission cannot be accepted. The case of the petitioner i.e a teacher subsequently on inviting the fresh applications, appointed in the college and/or the University cannot be equated with and / or compared with that of an employee appointed in college and subsequently transferred to another college and/or appointed in one school and subsequently transferred and/or appointed in another school, there, there is a nexus and/or connection. In the present case, there is no nexus and/or connection with the services as a Teacher in the school with that of lecturer in the University and/or College. There is no policy of the State Government in granting such pay protection. Under the

circumstances, the prayer of the petitioner cannot be granted. So far as the reliance placed upon Annexure G, page 20 of the petition is concerned, as mentioned in the affidavit in reply so far as the case of Smt. Pravinaben Bhudhdev cannot be equated with the petitioner's case, as in the case of Smt. Pravinaben Bhudhdev, it was a case of transferred from one college to another college and in the present case, it is the case of appointment of Assistant Teacher to a college in the Bhavnagar University on inviting fresh applications and when there being any condition in the advertisement. Under the circumstances, the petitioner is not entitled to any relief prayed for.

7. For the reasons stated above, petition fails and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. There shall be no order as to cost.

(M.R. SHAH, J.)

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